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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5

IN THE MATTER OF:)	'99 MAR 18 09:33
)	Docket No. CAA-5-90-007
Size Control Company)	
Elk Grove Village, Illinois)	Proceeding to Assess
)	Administrative Penalty
)	under Section 113(d) of the
Respondent.)	Clean Air Act, 42 U.S.C.
)	§ 7413(d).
_____)	

ADMINISTRATIVE COMPLAINT AND
NOTICE OF PROPOSED ORDER ASSESSING A PENALTY

This administrative action is instituted pursuant to Section 113(d) of the Clean Air Act ("CAA"), 42 U.S.C. § 7413(d), against Respondent, Size Control Company ("Size Control") a subsidiary of Greenfield Industries, Inc., which is a subsidiary of Kennametal Corporation, for administrative penalties. The Complainant is by lawful delegation, the Director of the Air and Radiation Division, of the United States Environmental Protection Agency, ("U.S. EPA"), Region 5.

STATUTORY AND REGULATORY BACKGROUND

1. On January 25, 1995, in accordance with Section 112 of the CAA, U.S. EPA published as a final rule the National Emission Standards for Chromium Emissions from Hard and Decorative Electroplating and Chromium Anodizing Tanks ("Chrome Plating NESHAP"), found at 40 C.F.R. Part 63,

Subpart N. 60 Fed. Reg. 4963. The Chrome Plating NESHAP was first proposed December 16, 1993. 58 FR 65768.

2. A "new source" means any affected source the construction or reconstruction of which is commenced after the Administrator first proposes a relevant standard under Part 63. 40 C.F.R. § 63.2.
3. Forty C.F.R. § 63.343(b)(1) requires that each owner or operator of an affected source conduct an initial performance test as required in 40 C.F.R. § 63.7.
4. Forty C.F.R. § 63.7(a)(2)(ii) requires that a new source conduct an initial performance test within 180 days after initial startup to demonstrate compliance with the applicable standard.
5. Under 40 C.F.R. § 63.345(b)(1), no person may construct a new affected source or reconstruct an affected source subject to this subpart without submitting notification to the Administrator.
6. Under 40 C.F.R. § 63.345(b)(5)(i), an owner or operator of a new or reconstructed source shall submit the notification of construction or reconstruction required by paragraph (b)(1) of this section as soon as practicable before the construction is planned to commence.

7. Under 40 C.F.R. §§ 63.347(c)(2)(ii) and (iii), the owner or operator of a new or reconstructed source that has an initial startup after January 25, 1995, shall submit an initial notification of when construction/reconstruction was commenced no later than 30 calendar days after such date and a notification of the actual date of startup of the source within 30 days of startup. This notification shall be in addition to that required in 63.345(b).
8. Under 40 C.F.R. § 63.342(f)(3), the owner or operator of an affected source subject to the work practice standards of this section (hard chrome and decorative plating operations) shall prepare an operation and maintenance plan to be implemented no later than the compliance date.

GENERAL ALLEGATIONS

9. Respondent, Size Control Company, is a subsidiary of Greenfield Industries, Inc., which is a subsidiary of Kennametal Corporation. Size Control does business in the State of Illinois.
10. Respondent is a "person" as defined at 42 U.S.C. § 7602.
11. Size Control owns and operates one hard chrome plating tank at its facility located at 825 Chase Avenue, Elk Grove Village, Illinois. Operation commenced at this location in November 1996.

12. Size Control previously operated the Chrome plating tank at 299 Bond Street, Elk Grove Village, Illinois.
13. On July 26, 1995 the Illinois Environmental Protection Agency received an initial notification from Greenfield Industries, Inc., that Size Control had one Hard Chrome plating tank at 299 Bond Street, Elk Grove Village, Illinois, that was subject to the Chrome NESHAP.
14. When Size Control relocated its operation to the Chase Avenue address in 1996, Size Control did not notify either the IEPA or the U.S. EPA.
15. On March 25, 1998, U.S. EPA attempted to inspect Size Control at the Bond Street address and learned that it had relocated. U.S. EPA located Size Control and inspected the operations at the Chase Avenue address. During the inspection, U.S. EPA learned that the facility had not conducted an initial performance test, nor did they have an operation and maintenance manual on site. During the inspection, U.S. EPA provided Size Control with a copy of the Chrome NESHAP requirements and emphasized that it appeared that this source was subject to the Chrome NESHAP.
16. On September 4, 1998, U.S. EPA issued an Information Request pursuant to Section 114 of the CAA that required Size Control, among other things, to conduct an emissions test on the stack serving the chrome plating tank.

17. After receipt of the Information Request, Size Control ceased operating the chrome tank and installed a composite meshpad system.
18. Size Control submitted a notification form for the chrome plating operation on September 24, 1998.
19. On October 16, 1998, Size Control resumed operation and conducted a performance test on the stack serving the chrome plating tank. Test results indicate that the emissions from the Chrome plating operation are below the emission limit established in the Chrome NESHAP.
20. On October 28, 1998, officials of Size Control met with U.S. EPA representatives in an informal conference to discuss the results of the performance test, and the schedule for Size Control to return to compliance with the requirements of the Chrome Plating NESHAP.
21. On November 24, 1998, Size Control completed an operation and maintenance manual and mailed a copy to U.S. EPA.

COUNT 1

22. Paragraphs 1 through 21 of this Complaint are incorporated by reference.
23. Size Control's failures to timely notify U.S. EPA of construction of the hard chrome plating tank constitutes a violation of the notification requirements of 40 C.F.R.

§§ 63.345(b)(1) and (b)(5)(i), and Section 112 of the Clean Air Act.

COUNT 2

24. Paragraphs 1 through 21 of this Complaint are incorporated by reference.

25. Size Control's failures to submit timely notifications for commencement of construction and startup of operation constitute violations of the notification requirements of 40 C.F.R. §§ 63.347(c)(2)(ii) and (iii) and Section 112 of the Clean Air Act.

COUNT 3

26. Paragraphs 1 through 21 of this Complaint are incorporated by reference.

27. Size Control's failure to conduct an initial performance test within 180 days of the October 1997 startup of the chrome tank at the new location constitutes a violation of 40 C.F.R. § 63.343(b)(1) and § 63.7(a)(2)(ii), and Section 112 of the Clean Air Act.

COUNT 4

28. Paragraphs 1 through 21 of this Complaint are incorporated by reference.

29. Size Control's failure to have an operation and maintenance plan on site from commencement of operation in November 1996 is a violation of 40 C.F.R. § 63.342(f)(3).

NOTICE OF PROPOSED ORDER ASSESSING A CIVIL PENALTY

30. Pursuant to Section 113(d)(1) of the CAA, 42 U.S.C.

§ 7413(d)(1), the Debt Collection Improvement Act of 1996, 31 U.S.C. § 3701, and the Civil Monetary Penalty Inflation Adjustment Rule at 61 Fed. Reg. 69362 (Dec. 31, 1996), the Administrator of U.S. EPA may assess a civil penalty of up to \$27,500 per day for each violation, up to a total of \$220,000, for violations of requirements under the CAA. The proposed civil penalty herein has been determined under those authorities in accordance with Section 113(e)(1) of the CAA, 42 U.S.C. § 7413(e)(1), which requires Complainant to take the following factors into consideration in determining the amount of any penalty to be assessed under Section 113: the size of Respondent's business; the economic impact of the proposed penalty on Respondent's business; Respondent's full compliance history and good faith efforts to comply; the duration of the violations alleged in the Complaint as established by credible evidence (including evidence other than the applicable test method); payment by Respondent of penalties previously assessed for the same alleged violations; the economic benefit of noncompliance; and the seriousness of the alleged violations (in addition to such other factors as justice may require).

31. After consideration of the factors set forth at Section 113(e)(1) of the CAA, based upon the facts and circumstances alleged in this Complaint, U.S. EPA hereby proposes to issue to Respondent a Final Order Assessing Administrative Penalties assessing a penalty in the amount of \$154,000. This proposed penalty was calculated under Section 113(e) of the CAA, with specific reference to the Clean Air Act Stationary Source Penalty Policy (Penalty Policy). The Penalty Policy provides a rational, consistent, and equitable calculation methodology for applying the statutory penalty factors set forth above to particular cases. The penalty calculation is explained in more detail below. A copy of the Penalty Policy accompanies this Complaint.
32. In assessing the proposed penalty, U.S. EPA considered the economic benefit a violator derives from the alleged violations in determining the appropriate penalty. A violator cannot be allowed to derive monetary profit from its noncompliance with the CAA, both for deterrence purposes and because other regulated entities have incurred expenses in complying with the CAA. Size Control conducted a performance test in October 1998. The stack test cost \$2,800. Accordingly, the proposed penalty includes the economic benefit of the Respondent received from a seventeen-month delay in conducting a stack test.

33. In assessing the proposed penalty, U.S. EPA considered the actual or possible harm resulting from the level of exceedance of the alleged violations. The proposed penalty does not include a component corresponding to the potential harm because there was no indication of exceeding the emission limitations at the chrome plating operation.
34. In assessing the proposed penalty, U.S. EPA considered the toxicity of the pollutant involved in the violations. Hexavalent chrome, the pollutant of concern, is listed as a toxic air pollutant in Section 112(b)(1) of the CAA. The proposed penalty does not include a component corresponding to the potential harm from emitting hexavalent chrome, a toxic air pollutant, because there is no indication of exceeding the emission limitation.
35. In assessing the proposed penalty, U.S. EPA considered the quality of the air in the area where the violating facility is located with respect to the pollutant(s) involved in the violations. The proposed penalty does not include a component for the quality of the air in the area, as there is not an applicable National Ambient Air Quality Standard for chrome.

36. In assessing the proposed penalty, U.S. EPA considered the duration period of the violations. Size Control failed to notify the Agency of initial construction and startup of the chrome plating tank at the new location for twenty-five months. Size Control failed to conduct a stack test until eighteen months after the regulations required. Size Control failed to have an operation and maintenance plan at the facility until twenty-five months after the Chrome NESHAP required. Accordingly, this proposed penalty includes a component corresponding to the potential harm for each time period of violation.
37. In assessing the proposed penalty, U.S. EPA considered the importance of reporting and notification requirements and testing requirements of the CAA. Accordingly, this proposed penalty includes a component corresponding to the late notification and late testing of the chrome plating operation by Size Control.
38. In assessing the proposed penalty, U.S. EPA considered the size of Respondent's business in determining the appropriate penalty. Kennametal's net worth is believed to be approximately \$409 million dollars. Accordingly this proposed penalty includes a component which considers the size of Respondent's business.

39. In assessing the proposed penalty, U.S. EPA considered Respondent's full compliance history and good faith efforts to comply. No penalty adjustment was deemed warranted by Respondent's compliance history. Good faith efforts Respondent made to comply, and its degree of cooperation, are reflected in the proposed penalty.
40. In assessing the proposed penalty, U.S. EPA considered whether Respondent has paid penalties previously assessed for the same violation(s). Respondent is not believed to have paid any penalties for the violations at issue, and no penalty adjustment was deemed warranted by this factor.
41. The proposed penalty of \$154,000 reflects a presumption of Respondent's ability to pay the penalty and to continue in business based on the size of its business and the economic impact of the proposed penalty on its business.
42. Respondent shall pay the assessed penalty by certified or cashier's check payable to "Treasurer, the United States of America," and shall deliver it, with a transmittal letter identifying the name of the case and docket number of this Complaint, to:

U.S. Environmental Protection Agency, Region 5
P.O. Box 70753
Chicago, Illinois 60673

Respondent shall also include on the check the name of the case and the docket number. Respondent simultaneously shall send copies of the check and transmittal letter to:

Cynthia Curtis (AE-17J)
Air and Radiation Division
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

and,

James Morris (C-14J)
Associate Regional Counsel
Office of Regional Counsel
U.S. EPA, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

43. The penalty proposed in this Complaint has been developed based on the best information available to U.S. EPA at this time, and may be adjusted if the Respondent establishes an inability to pay or other defenses relevant to the appropriateness of the penalty.

OPPORTUNITY TO REQUEST A HEARING

44. Section 113(d)(2) of the CAA, 42 U.S.C. § 7413(d)(2), requires the Administrator of U.S. EPA to provide to any person against whom the Administrator proposes to assess a penalty an opportunity to request a hearing on the proposed penalty. Accordingly, you have the right to request a hearing to contest any material fact alleged in the Complaint or to contest the appropriateness of the amount of the proposed penalty. In order to request a hearing, you

must specifically make such request in your Answer, as discussed in Paragraph 46 below.

45. The hearing that you request regarding the Complaint will be conducted in accordance with the provisions of the "Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties and the Revocation or Suspension of Permits," 40 C.F.R. Part 22, as amended by 57 Fed. Reg. 4316 (1992), a copy of which accompanies this Complaint.

ANSWER

46. To avoid being found in default, you must file a written Answer to this Complaint with the Regional Hearing Clerk, (R-19J), U.S. EPA, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, within thirty (30) calendar days of your receipt of this Complaint. In computing any period of time allowed under this Complaint, the day of the event from which the designated period begins to run shall not be included. Saturdays, Sundays and Federal holidays shall be included, except when a time period expires on such day, in which case the deadline shall be extended to the next business day.
47. Your Answer must clearly and directly admit, deny, or explain each of the factual allegations contained in the Complaint, or must state clearly that you have no knowledge

regarding a particular factual allegation that you cannot admit, deny, or explain, in which case the allegation will be deemed denied. Your Answer also specifically shall state:

- a. The circumstances or arguments that you allege constitute grounds for defense;
- b. The facts that you intend to place at issue; and
- c. Whether you request a hearing, as discussed in Paragraphs 44 and 45, above.

48. Failure to respond to any factual allegation in this Complaint shall constitute admission of the alleged fact.

49. You must send a copy of your Answer and any documents subsequently filed in this action to James Morris, Associate Regional Counsel (C-14J), U.S. EPA, 77 West Jackson Boulevard, Chicago, Illinois 60604-3590. You may telephone Mr. Morris at (312) 886-6632.

50. If you fail to file a written Answer within thirty (30) calendar days of your receipt of this Complaint, the Administrator of U.S. EPA may issue a Default Order. Issuance of a Default Order will constitute a binding admission of all allegations made in the Complaint and a waiver of your right to a hearing. 40 C.F.R. § 22.17. The civil penalty proposed herein shall become due and payable without further proceedings sixty (60) days after the

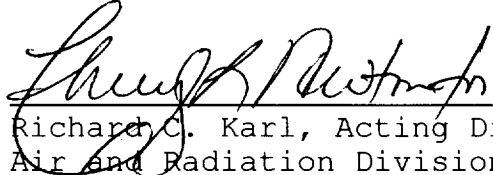
Default Order becomes the Final Order of the Administrator, pursuant to 40 C.F.R. §§ 22.27 or 22.31.

SETTLEMENT CONFERENCE

51. Whether or not you request a hearing, you may request an informal conference to discuss the facts of this action and to arrive at a settlement. To request a settlement conference, write to Cynthia Curtis, U.S. EPA, Region 5, Air and Radiation Division, Air Enforcement and Compliance Assurance Branch (AE-17J), 77 West Jackson Boulevard, Chicago, Illinois 60604-3590, or telephone Ms. Curtis at (312) 353-6959.
52. Your request for an informal settlement conference does not extend the thirty (30) calendar day period during which you must submit a written Answer to this Complaint. You may pursue simultaneously the informal settlement conference and adjudicatory hearing processes. U.S. EPA encourages all parties facing civil penalties to pursue settlement through an informal conference. However, U.S. EPA will not reduce the penalty simply because such a conference is held. Any settlement that may be reached as a result of such a conference shall be embodied in a Consent Order. Your agreement to a Consent Order Assessing Administrative Penalties shall constitute a waiver of your right to request a hearing on any matter stipulated to therein.

53. Neither assessment nor payment of an administrative civil penalty shall affect your continuing obligation to comply with the Clean Air Act or any other Federal, State or local law or regulation.

3/17/99
Date


Richard C. Karl, Acting Director
Air and Radiation Division
U.S. Environmental Protection
Agency, Region 5
77 West Jackson Boulevard
Chicago, Illinois 60604-3590

CAA-5- 99-007

CERTIFICATE OF SERVICE

I certify that on MAR 18 1999, I deposited in the U.S. Mail, certified mail, return receipt requested, a copy of the Clean Air Act Administrative Complaint, and the Part 22 Rules of Practice addressed to the following Respondent:

Illinois Corporation Service
Registered Agent For
Greenfield Industries, Inc.
700 South Second Street
Springfield, Illinois, 62704

I also certify that a copy of the Complaint was sent by first class mail to:

Darryl McIntosh, Plant Manager
Size Control Corporation
825 Chase Avenue
Elk Grove Village, Illinois 60007

Jim Kurtz
Greenfield Industries, Inc.
21 Airport Drive
Rockford, Illinois 61109

Robert L. Mc Geehan, President and CEO
Kennametal, Inc.
1600 Technology Way
LaTrobe, Pennsylvania 15650

David Kolaz, Chief
Compliance and Systems Management Section
Bureau of Air
Illinois Environmental Protection Agency
1021 North Grand Avenue
Springfield, Illinois 62702

Harish Narayan, Acting Regional Manager
Region I
Illinois Environmental Protection Agency
1701 First Avenue
Suite 1202
Maywood, Illinois 60153

Certified Mail Number: P140778 969

I also certify that the original Clean Air Act
Administrative Complaint and Consent Order were filed this same
date with:

'99 MAR 18 A9:33

Sonja Brooks, (R-19J)
Regional Hearing Clerk
77 West Jackson Boulevard
Chicago, Illinois 60604

3/18/99
Date

Betty Williams
Betty Williams, Secretary
Air Enforcement and Compliance
Assurance, Illinois-Indiana Section

CAA-5-99-007